**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**

**AT JODHPUR**

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**:ORDER:**

Suresh Singai Vs University of Rajasthan & Ors.

**S. B. CIVIL WRIT PETITION NO.3070/2004 UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA**

Date of Order : 15th Feb., 2005

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**PRESENT**

**HON'BLE MR. JUSTICE PRAKASH TATIA**

**REPORTALBE**

Mr.S.N.Trivedi, for the petitioner.

Mr.J.P.Joshi, for the respondents.

Mr.L.R.Upadhayay, Dy.GA, for the State.

**BY THE COURT:**

Heard learned counsel for the parties.

Brief facts of the case are that petitioner after completing his B.Sc. Final Examination in the year 2000 applied for the BDS course for the year 2002-04. The petitioner continued to study in the respondent no.2-college. The petitioner's original certificates were sent to the

respondent-University for the purpose of enrollment,but same were returned to the petitioner with remark that since the petitioner does not have 50% marks in Physics, Chemistry and Biology subjects, therefore, he is not eligible for enrollment. In response to the above letter dated 24th May, 2004 of the University, the respondent no.2-college submitted point-wise reply and made it clear that petitioner passed B.Sc. with 56% marks in aggregate and he has passed in Physics, Chemistry and Biology and he has also passed his fist year science examination with the subjects of Chemistry, Botany, Zoology and English and thereby he became eligible for the admission of first year BDS course. The copy of the letter dated 18th May, 2004 of the respondent-college is placed on record as Annex.7. Despite getting justification from the respondent-college, nothing was communicated by the University to the respondent-college about enrollment of the petitioner by the University. The respondent-college vide letter dated 14th June, 2004 (Annex.9) informed the petitioner that there are some objections by the University of Rajasthan in eligibility and enrollment in the case of the petitioner and the college has already submitted reasons justifying for the enrollment,but no reply has been received from the University. The copy of the letter dated 14th June, 2004 is placed on record as Annex.9. The petitioner apprehending that he may not be permitted to appear in the examination preferred this writ petition.

This court on 29th July, 2004 issued notices to the respondents including the University of Rajasthan. This court finding merit in the case by order dated 29th July, 2004 itself, directed the respondent Rajasthan University to provisionally enroll and allow the petitioner to appear in the ensuing examination. The court also observed that this provisional enrollment or permission to appear in the examination, will be subject to the order, which may be passed in the writ petition and petitioner will not be entitled to claim any benefit, merely on the basis of enrollment or appearing in the examination, and the University was directed not to declare the result of the petitioner without prior permission of the court. The order was complied with by the University and the petitioner could appear in examination for 1st year BDS Course because of the interim order passed by this Court.

On 28.1.2005, learned counsel for the petitioner submitted that petitioner was given admission in the first year course of BDS and he appeared in the examination, but in view of the order of this court dated 29th July, 2004, the result of the petitioner cannot be declared. Despite service, nobody appeared on behalf of respondent no.1 University, therefore, on 28.1.2005 this court directed the Registrar of University to remain present in court with full facts because of the reason that material placed on record and as per stand taken by the

college affiliated to the University supported the case of the petitioner, but since relief was sought against the University and it was matter relating to the admission of student to a technical education, therefore, to throughly examine the eligibility of the student, the full assistance of the University was necessary.

No reply to the writ petition was filed by the Rajasthan University inspite of the court's order dated 28.1.2005. On 10.2.2005, the Registrar, University of Rajasthan himself appeared in person with his counsel, but on that day no reply was filed. The Registrar admitted that petitioner was found eligible, but subsequently, he was permitted to appear in the Examination of the first year BDS course and he also passed the course.

It was unfortunate, the interim order, in two ways was against the respondent no.1; (i) directing the respondent no.1 to enroll the petitioner provisionally and permit him to appear in the examination and (ii) the University was restrained from declaring the result.

When above was the statement of Registrar, Rajasthan University, this court observed that “Today's statement of the learned counsel for the respondent after taking instructions from the Registrar

of the University clearly reveals that the University officials came to know that the petitioner was eligible candidate still they did not submit reply to the writ petition and it appears that by default they took a change of the dismissal of the writ petition despite the fact that they had already decided that the petitioner was eligible candidate. This court passed order on 29.7.2004 not to declare result of the petitioner. Though the petitioner was found eligible and he succeeded in the examination still the respondent University did not turn up before this Court for seeking modification of the order dated 29.7.2004 so as to declare the result of the petitioner and give him admission to the higher class. The order dated 29.7.2004, though obtained by the petitioner, does not mean that the respondents had no duty to bring to the notice of the Court the relevant facts which may entitle the petitioner to get the relief. This applies more when the respondent is an educational institution. The University cannot sit over the fate of any of the students. The default committed by the respondent cannot be appreciated by this Court." On request the respondent-University was permitted to file the reply.

Now, the reply has been filed by the respondent. The respondent in their reply submitted that the petitioner was not found eligible for the admission to the BDS course as he did not secure the requisite marks

in previous examinations. According to respondent the eligibility condition against the management quota seat is B.Sc with 50% aggregate marks or 10+2 with 50% aggregate marks in B.Sc. Part-Ist examination. According to respondent, the petitioner had neither secured 50% marks in 10+2 Examination nor he has secured in B.Sc.Ist Years examination. In these circumstances, the petitioner was not considered eligible for enrollment to the BDS course. According to learned counsel for the respondent, the petitioner for the first time made it known to the respondent-University that he has qualified the B.Sc. with 50% marks, by submitting his mark-sheet in the present writ petition and having been apprised of the fact that petitioner had qualified B.Sc. Examination with 50% aggregate marks, the respondent-University has examined the candidature of the petitioner again and has found him eligible for enrollment to the BDS course.

If what has been stated in reply is taken to be correct then all could have been done by the respondent-University before refusing the enrollment to the petitioner on or before 14th May, 2004, the date on which the respondent no.1-University returned the original documents to the respondent no.2-institute alongwith the letter dated 14th May, 2004. Be that as it may, the respondent no.2-institute responded to the University's communication dated 14th May, 2004 by letter dated 18th

May, 2004 and very categorically stated that the petitioner has secured 56% marks in B.Sc. in aggregate. Reasons for petitioner's eligibility has been shown to the respondent no.1-University by the respondent no.2-college well before examination for the course. The respondent no.1-Rajasthan University did not care to look into the letter of their own affiliated college dated 18th May, 2004. In reply, the University did not mention any date on which the respondent-University took the decision that petitioner is eligible candidate. The omission appears to be deliberate and with purpose to save the officers of the University.

Learned counsel for the respondent-University submits that respondent-University came to know about all facts after the service of notice of the writ petition upon the respondent-University. It appears from the record that notice upon the respondent-University was served on 28th Sept., 2004. If the respondent-University came to know about all these facts about eligibility of the petitioner in the month of Sept., 2004 then it was their duty to submit proper reply or any application before the court so that the petitioner could have, without any hanging sword over his head, persuaded his studies in a technical course. The officers holding any post cannot say that they have right not to decide or they have right to not act if they have decided the issue. That right not to decide is not available to any of the officers on any of the

pretext like pendency of the case before the court of law, where there is no order against their taking decision in the matter not amounting to over reaching the process of the court. This duty becomes more and more important when the officers and authorities finds that the grievance of the petitioner approaching the court is just, proper and legal. It is the duty of the respondents to inform the court that petitioner is entitled for the relief and by this only, the biggest litigants like Government and the Public Institutions, can avoid the burden of the court and may discharge their statutory duties "to decide", which is there in their appointment order itself as express and if not express, implied condition to hold and to continue on the post. The officers are appointed to take decision, may it be in favour of aggrieved person. This is unfortunate that in a matter of studies where courses may be of one year, two years or even five years, the authorities either sit over the matter or after taking a wrong decision, failed in correcting the mistake in time and thereby they may ruin the career of the meritorious students. The person, who cannot take decision in time are more dangerous than the person who is taking even a wrong decision. A wrong decision can be corrected, but indecision cannot be corrected even by the higher authority or appellate authority or the authority having supervisory jurisdiction. The consequence of denying admission to a meritorious student is more dangerous because of the reason that

he will serve the Nation for decades, if he would get the proper opportunity to take the degree in that technical subject. The career of those persons having short period of five years or ten years with seniority in the service cannot have precedent over a career of a student of the University.

This court constrained to observe so because of the reason that this court finds in number of cases that the authorities did not decide the matter in time,therefore, the students suffer heavily to the extent of ruining of their career.

The facts of this case clearly reveal that the respondent-University had no jurisdiction to ignore or sit over the letter of their own college dated 18th May, 2004. Had they applied their mind at relevant time, the present writ petition could have been avoided. Not only this, but the petitioner, who was eligible for admission could appear in the examination only because of the timely order passed by this court but despite this fact, the respondent no.1-University has successfully denied the full relief to the petitioner and kept the result of the petitioner un-declared by taking help of the order of this court dated 29th July, 2004 and deprived the petitioner from freely ensuing his classes for the Second Year of BDS Course. There is no explanation from

the University why University did not inform the court immediately after receipt of the notice from the court that the student is eligible candidate. Normally no one can claim any right to ignore the notices issued by the court. It may be true that respondent may not like to contest the issue, but when notice is issued to a public authority or to a educational institution then it is the duty of the public authority or of the authority in the educational institution to fairly comeforward and assist the court immediately without any delay so that the relief can be granted to the parties without any delay. The duty upon the authority in the educational institution is more because of the reason that by their slight delay, the other party may suffer irreparable injury and he may be deprived to take a course for which he was eligible and he may become ineligible because of the delayed information received from the respondent. There appears to be no reason for the University to sit over the result of the petitioner after knowing that petitioner was eligible candidate for admission to the BDS Course and the University committed mistake in not enquirying into the matter properly,despite the facts that all material were available in the office of the University.

In view of the above, the writ petition of the petitioner deserves to be allowed, hence allowed. Since the respondents have already admitted that petitioner is eligible candidate, therefore, the

respondents shall finally enroll the petitioner, if they have given only provisional enrollment number to the petitioner and the petitioner shall be treated as a regular selected and admitted candidate for all purposes for the BDS Course. The respondents who did not grant the relief to the petitioner despite their taking a decision about the eligibility of the petitioner, therefore, the respondent no.1-University is liable to compensate the petitioner and for that purpose cost of Rs.10,000/- is awarded against the respondent no.1-University. The cost shall be paid within a period of two months from today to the petitioner by the respondent no.1-University.

**(PRAKASH TATIA), J.**

c.p.goyal/-